No. 08-456

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES SISSON and the

CHARLES SISSON REVOCABLE LIVING TRUST,

Petitioners,

v.

CYNTHIA G. WILCOX,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

SUPPLEMENTAL TO THE WRIT

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The Virginia Commonwealth Attorney has just informed petitioner that U.S. Supreme Court case 134 U.S. 371 *Loney* precludes their prosecution of Mr. Frank on charges of perjury relating to his deposition taken a year after the trial, even if his perjury occurred in their jurisdiction. Mr. Frank was the general contractor for the plaintiff whose testimony provided the foundation for the trial decision, and as expounded in the writ there is compelling evidence that he perjured himself in a deposition taken after trial denying that plaintiff purchased his testimony. Thus the Supreme Court has established itself as the only enforcement agent to ensure the proper administration of justice in cases arising from Federal circuit courts, and with that great power has assumed a great responsibility to ensure that the constitutional right to due process is preserved. This writ of certiorari in fact constitutes the last opportunity to review a Federal court decision to ensure it was not obtained through conspiracy to defraud and perjury. It remains to be seen if the court will allow the presentation of compelling evidence it was, arising from seven witnesses, including the plaintiff's own attorney.

This petition identified the unusual circumstances under which the decision in *Wilcox v. Sisson* was obtained. The trial judge designated the plaintiff's foundation witness, her general contractor, as an "uncompensated fact witness" and endorsed his role as the sole provider of evidence on the building "defects" alleged by plaintiff (who denied defendant access to even inspect, let alone correct, them), and denied all of defendant's efforts during the trial to expose the business and fiduciary relationships

between plaintiff and her "uncompensated fact witness". If the judge had not resolutely denied this line of questioning during trial, it could have uncovered the champerty four witnesses aver Mr. Frank confessed to less than a year afterward, in a meeting Mr. Frank voluntarily attended in the office of defendant's counsel. As Mr. Frank's contributions to plaintiff's complaint were pervasive and infected all aspects of the evidence presented (see below), his role was clearly central to the decision, which could have not been obtained without his efforts. In denying the Rules 59(b) and 60(b) motions brought to conduct evidentiary hearings exploring his role in the complaint with the aim of reversing the original verdict, the trial judge adamantly ignored Mr. Frank's own admission he was not an uncompensated fact witness and the pervasive evidence he committed perjury in denying any agreement to purchase his testimony--which if he had confirmed for the record would have exposed him to substantial punitive penalties. In the process she disregarded the potential testimony of seven witnesses—including two former employees of Mr. Frank and the attorney representing Ms. Wilcox—who can testify he perjured himself in his deposition denying his confession. Then she summarily dismissed the whole matter as a tempest in a teapot, concluding even if Mr. Frank's testimony hadn't been admissible, it was irrelevant in any case as "Given that Mr. Franks's (sic) testimony was painstakingly and independently corroborated, no fraud could have infected the judgment."

In assessing the evidence presented in a case, it is perhaps understandable that a judge might on

occasion misrepresent the testimony presented during proceedings. Even so, the number of such errors egregiously detrimental to defendant in the judicial opinion in *Wilcox v. Sisson* is remarkable. One example was the judge's airy dismissal of the testimony from defendant's general contractor that the Dexter house was the best he ever built, by ruling in her findings of fact he was only a handyman who never built a house before and was out of his depth in this project. In fact, the undisputed testimony at trial was he had built dozens of houses prior to Dexter and in particular two just before for the defendant, one of which was a prototype for the Dexter house so well built that after it was sold to two lawyers, they never even bothered to make a telephone call to raise construction issues. Another example was the finding of fact that defendant obtained a permit to build a 3500 square foot house and then proceeded to build one twice that size. In fact, the permit itself does not identify the size of the envisioned construction, but the official, stamped blueprints which constitute the actual DCRA authorization for construction (the stamped blueprints must be continuously available on site to allow inspectors instant confirmation of authorized construction) and introduced into evidence *by the plaintiff* approve two floors of about 50 by 70 foot each, *3500 square feet per floor*, or 7000 sq ft in all, not including the existing basement.

These errors certainly prejudiced the ruling against the defendant. But they do not rise to the level of direct contradictions of earlier judicial findings, which constitute legal errors of another dimension, and in themselves deny due process. Compare, for

example, the judge's dismissal of the Rule 59(b) motion in ruling that Mr. Frank's testimony was irrelevant to the final decision so that "no fraud could have infected the judgment," with her assessment of Mr. Frank's relevance to her findings in the context of her opinion awarding plaintiff exceptional legal fees: "**Richard Frank, Ms. Wilcox's contractor who identified and corrected the flaws in the Dexter Property... was a critical witness**" and the evidence he provided was "**particularly crucial**" (emphasis added). Memorandum Opinion on Fee Application, Civil Action No. 02-1455 (RMC), United States District Court for the District of Columbia, May 25, 2006, pp.15-16. As another example of crucial reversals of earlier findings in her ruling on the Rule 59(b) motion, in concluding that Mr. Frank's testimony was "painstakingly and independently" corroborated by other witnesses, she ignored the trial record in which she acknowledged Mr. Frank was the source for the analysis presented by the plaintiff's structural engineer (See Appendix F, where the trial judge states "To the extent that the expert opinion [of Mr. Edelson, the structural engineer testifying for the plaintiff] is based on what he was told by Mr. Frank, that's what it's based on.") Clearly, during trial the judge found Mr. Frank's testimony—he was, after all, an "uncompensated fact witness" by her ruling--of paramount importance in forming her decision. It was only when his credibility came into question, threatening the integrity of her earlier verdicts, that she diminished his significance.

This writ has endeavored to show point by point that the judge's account of the proceedings in the opinions denying the Rule 59(b) and 60(b) motions is

untenable even if petitioner is not awarded the benefit of doubt, which under *Stanley* the Appeals Court was so obliged. Appellant has offered compelling evidence supporting these claims, supporting his petition that would ultimately result in evidentiary hearings, and certainly to reverse the Appeals Court decision to grant plaintiff summary judgment denying evidentiary hearings. Appellant has never argued that he has presented clear and convincing evidence of malfeasance, if that is the required standard, but that evidentiary hearings should be held which would. There is no disputing that at this point the evidence supporting the alleged perjury by the foundation witness for the plaintiff is largely "hearsay". However, there is an awful lot of it. At least seven witnesses can swear that Mr. Frank either confessed his testimony was purchased by the plaintiff, had independent knowledge that he had such an arrangement, or almost surely perjured himself at his deposition when he denied any such confession, and the evidence provided includes sworn affidavits from four of them. The argument that this evidence is "only hearsay" loses its credibility and approaches self-serving status when the only reason it remains "hearsay" is that the judiciary abjectly refuses to authorize the evidentiary hearings that would put it on the record and assess the credibility of all witnesses. With great power comes great responsibility, lest it become tyranny. The Court of Appeals decision granting plaintiff summary judgment denying further review of this verdict should be reversed lest an opinion almost certainly based on fraud and perjury be endorsed by the law of the land.